Filed 6/11/19 In re Ivy A. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re IVY A., a Person Coming Under the Juvenile Court Law.	
CONTRA COSTA COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. PAUL A., Defendant and Appellant.	A154918 (Contra Costa County Super. Ct. No. J1800268)

Paul A. (Father) appeals from the juvenile court's jurisdictional and dispositional orders related to his infant daughter, Ivy. Father contends the court erred because (1) the evidence was insufficient to support its jurisdictional findings and order; and (2) it improperly appointed a guardian ad litem for him. We disagree and affirm.

BACKGROUND

Ivy was born on February 7, 2018, and immediately went into withdrawal for opioids. She tested positive for methadone at birth and required weeks of hospitalization to be titrated off morphine.

Petition

On March 5, 2018, Contra Costa County Children and Family Services (the Department) filed a juvenile dependency petition for Ivy under Welfare & Institutions

Code section 300, subdivisions (b) and (j).[1] The petition alleged Ivy was at substantial risk of suffering serious physical harm because Ivy's mother (Mother) had a chronic and severe drug abuse problem. It also alleged Father had a known history of drug addiction, a criminal lifestyle and homelessness that impaired his ability to be Ivy's custodial parent. The petition also alleged that Ivy had two half-sisters who were abused or neglected by Father and that there was a risk that Ivy would be, too.

Detention Phase

At the detention hearing held on March 6, 2018, Father declined appointment of counsel and told the court: "No thank you. [¶] I would like to represent myself." The court advised both parties it was better to be represented by an attorney. It also warned, "[Y]ou do know that we go by evidence . . . . [¶] [I]f you represent yourself, you don't get any breaks [¶] . . . [¶] [a]nd you will be treated as if you're an attorney, and it really doesn't bode well for you both not to have an attorney." When the court asked Father if he was sure about declining counsel, Father replied, "Positive."

The court detained Ivy and ordered her placed in an emergency licensed foster home upon her discharge from the hospital. It permitted supervised visits for the parents and ordered reunification.

At the conclusion of the hearing, Father agreed to take a drug test as requested by the court, which believed he was under the influence. But he later withdrew his consent.

Jurisdiction Phase

At the contested jurisdictional hearing set for March 22, 2018, the court again asked Father if he wanted appointed counsel, and he again declined. He explained: "I also realize if I get an attorney, I will not be able to speak. . . . I will be incompetent. I'm not going to go that route. I'm not an incompetent person. I know what's going on." He apologized for his behavior at the last hearing, denied that he was under the influence, and explained that he was upset because he had not done anything wrong. The jurisdiction hearing was continued at Father's request. Before adjourning, the court

[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

asked again if Father would take a drug test. Father said he would if he was not tested by police. When Father was told only the sheriff's deputy could administer a drug test, Father responded, "No thank you, ma'am."

The jurisdictional hearing was eventually held on May 3, 2018. The court again offered both parents counsel and both declined. County counsel expressed concern about Father's ability to understand the proceedings and requested he be assessed for appointment of a guardian ad litem. Minor's counsel joined the request.

The court conducted an informal inquiry into Father's competence. In denying the appointment request, the court explained: "I may see a lot of things here, but I think [Father's] able to articulate himself very well[.] I don't think a guardian ad litem could work here, because I don't think they could talk with him or work with him. So I'm not going to grant that motion. [¶] I think he wants to go the way he wants to go, and I don't think anyone . . . that I can appoint for him . . . would assist him. And he's insisting he doesn't want an attorney."

The court tried again to persuade the parents to accept appointed counsel. When the court advised them of the risks in proceeding without representation, Father asked, "Don't we have to have a jury trial?" and said he was going to request one. County counsel urged the court to ask more questions of Father to elicit answers demonstrating his inability to understand the proceedings. In response to the court's questions, Father explained he was there "because someone took our child" and detailed reasons why he believed Ivy was taken. After hearing his answers, the court proceeded with the hearing.

The county and Ivy's counsel requested the court exercise its jurisdiction on the basis of evidence provided in numerous documents, including an amended dependency petition, the social worker's Detention/Jurisdiction Report, judicially noticed documents related to a separate dependency proceeding in Los Angeles County involving Father's two other daughters, and a supplemental social worker report.

According to the Detention/Jurisdiction Report, Ivy required continued treatment and was struggling with methadone withdrawal. About a week after Ivy's birth, Mother told the social worker she had a four-year history of opioid abuse and had been in

treatment and counseling since May 2017. Mother told the social worker that Father, who lived in Southern California and the Bay Area, had no history of substance abuse and would provide for Ivy financially. When the social worker attempted to call Father, the numbers provided were out of service or did not allow messages.

The social worker was also told by a hospital doctor that Ivy's parents did not respond to phone calls, were not visiting Ivy, and only "stay[ed] for a few minutes" when they did. The social worker also described her conversation with a Los Angeles County social worker who said Father had two other children detained in Los Angeles. Ivy's half-sisters were ages 13 and 12 and did not share the same mother as Ivy. The Los Angeles social worker reported that they attempted reunification "but [Father's] behavior was too erratic to complete this plan." She said Father had "a history of substance abuse, mental illness and an extensive criminal record" and was "aggressive and threatening" towards his social workers there. In addition, the Detention/Jurisdiction Report contained a summary of Father's 15 arrests from August 1995 through September 2014, which included substance abuse and drug related charges, a few of which resulted in convictions.

The court also took judicial notice of court records from the Los Angeles County dependency. The documents indicated the girls were detained from their mother and initially released to Father. Months later, they were detained from Father as well. The court in Los Angeles sustained an allegation asserted under Section 300, subdivision (b) that Father "has a history of mental and emotional problems including suicidal ideation and involuntary psychiatric hospitalization, which render[ed him] in capable of providing regular care and supervision of the children." It also sustained an allegation which stated Father "left [his daughters] with [their] paternal grandparents without making a plan for the children's ongoing care and supervision. Further, [he] failed to provide the children with the basic necessities of life, including food, clothing, shelter, and medical treatment. Further, [he] leads a transient life style." The Los Angeles court found Father's mental and emotional condition and his failure to provide for his children endangered their health and safety and placed them at risk of physical and emotional harm and damage.

Also included in the judicially noticed documents was a restraining order requested by and granted to Father's parents, who had been caring for the two girls, and which allowed Father only supervised, monitored visits.

The supplemental social worker's report advised the court of "a series of troubling electronic messages from [Father]" reflecting Father's inability to understand the proceedings.

Counsel for the county and Ivy submitted on this documentary evidence, all of which the court accepted.

The parents responded with a series of their own documents.

Mother submitted a document entitled "Objections and Corrections to the Report of the Child Welfare Caseworker," which generally denied and refuted each of the allegations against her in the Detention/Jurisdiction Report.

Father submitted a response which without explanation or analysis stated: "I hereby claim by reservation of rights under UCC 1-308. I claim common law jurisdiction, I do not consent or waiver the benefit ." Invoking various articles and amendments to the United States Constitution, Father further pronounced: "So am I a man to believe CPS is above the Law and contra Costa county is above the u.s. Constitution. The U.S. Constitution does not mention exigent circumstances. CPS has or has not ever any evidence of any exigent circumstances. A Claim has to allege facts and law and demand remedy. No warrant has been issued. No warrant was issued , so they have no court or right to court. Who was harmed, no Corpus delicti. No evidence, they trespassed on my property." He included as an exhibit "excerpts of case law from state appellate and federal district courts and up to the U.S. Supreme Court, all of which affirm . . . the absolute Constitutional right of parents to actually *BE* parents to their children." He also attached a 7-page article entitled "Constitutional Defenses in DSS Cases," which appears to be directed at practitioners and summarily explains different constitutional defenses available to litigants in Department of Social Services proceedings.

The parents submitted a separate document expressing their "wish to have the child returned immediately." The document stated: "If you want to hold me or enter a plea for me I am going to charge you ten thousand dollars a day for every day you hold My property or until the injured party appears and if he doesn't appear . One dollar for every second you interfere with my rights. What is your wish? Does anybody in this room claim to have a claim to my property, my child?"

The court considered all these documents even though none of them were properly filed with the court or timely served on the parties.

At the hearing, Father stated: "I'm a man of a flesh, living, breathing person that's here right now in front of you. And I'm telling you right now that is my property. It's been stolen from me. And I would appreciate it, and I wish for the return of it." In addition to speaking of Ivy as his "property," Father objected to the whole proceeding, stating: "I do not consent to these proceedings. . . . Your offer is not accepted. I do not consent to being a surety for this case and these proceedings. [¶] I demand the bond be immediately brought forth so I can see who identified me if I'm damaged."

When the court asked if he had anything further, Father replied, "That's it." Father did not testify. Based on the record, it does not appear he requested any social worker be available for cross-examination. He called no witnesses.

The court found Ivy to be a child described by section 300, subdivision (b) by clear and convincing evidence and sustained the petition. The court found: "b-1, The child's mother . . . has a chronic and severe drug abuse problem that inhibits her ability to parent the child, in that; [¶] A, The child was born on February 7th, 2018, and went into withdrawal for opioids; the child required four weeks of hospitalization to be titrated off the morphine; [¶] B, The mother admits to using heroin for the past four years; [¶] C, The mother's explanation of drug addiction and treatment is inconsistent and does not match her medical records at the BAART Program; [¶] D, The baby tested positive for methadone at birth; [¶] E, BAART has refused to verify Mother's methadone care at this time." It further found: "B-2, That the mother is unable to protect the child from [F]ather's mental health problems and abusive behavior, which places the child at

substantial risk of physical harm. [¶] . . . [¶] B-3, . . . [F]ather . . . has a chronic and severe history of drug addiction, criminal lifestyle and homelessness that inhibits his ability to parent; [¶] [F]ather has a long history of arrests for drug possession and drug charges."

Based on the judicially noticed documents, the court also found Ivy to be described by section 300, subsection (j) by clear and convincing evidence: "On or around September 25th, 2017, the child's half-sibling[s] . . became dependents of the Juvenile Court, Los Angeles County. [¶] The court sustained the following counts regarding the child's father . . . : A, . . . [F]ather . . . has a history of mental and emotional problems, including suicidal ideation, and involuntary psychiatric hospitalization which rendered the father incapable of providing render the care and supervision of the child[ren]; Such mental and emotional condition on the part of the father endangers the children's physical health and safety, and places the children at risk of serious physical harm. [¶] . . . [¶] B, . . . [F]ather . . . left the children with the children's paternal grandparents without making a plan for the children's ongoing care and supervision; [¶] Further, the children's father has failed to provide the children with the basic necessities of life, including food, clothing, shelter and medical treatment; [¶] Further, the children's father leads a transient lifestyle; [¶] Such failure to provide for the children on the part of the children's father endangers the children's physical and emotional health, safety, well-being and places the children at risk of physical and emotional harm and damage.

At the conclusion of the hearing, the court once again asked Father to be drug tested and said he appeared to be under the influence and "quite erratic." He refused.

Disposition Phase

On May 17, 2018, the day scheduled for the contested disposition hearing, the court again asked Father if he wanted counsel, and he again declined. The court reminded Father that he would be held to the same standards and same procedures as an attorney without exception. Father requested that all counsel present be sworn before

they speak, which the court said was not necessary. The matter was continued because neither parent had received the social worker's disposition report.

On May 31, 2018, the next day set for disposition, both parents again declined counsel. After Father announced he wanted to submit a challenge to the "territorial jurisdiction" of the juvenile court, the court conducted a second informal guardian ad litem hearing. Father circulated a two-page document entitled "Jurisdictional Challenge/ - and – Judicial Notice." The document, signed by both parents, stated: "[We] challenge[] the Plaintiff to prove, in the official record, evidence of personal jurisdiction over me, as to what I said, did (contact), or signed (contract) to become a 'person' subject to this US court, administrative process, state written law . . . [¶] **Therefore**, upon the Plaintiff failure to evidence personal jurisdiction, as challenged, the court has a duty to dismiss for it's lack of personal jurisdiction which creates a general jurisdiction want. This case must be dismissed, as a matter of law, forthwith."[2]

Father explained, "I'm just interested in what's the State's compelling interest? The State must prove the compelling interest, and that's what I would like…. [S]omebody needs to get on the witness stand."

After county counsel and Ivy's lawyer commented on the proceeding, Father asked, "Are the attorneys witnesses[?]" The court informed Father that counsel had the opportunity to respond to whatever papers were submitted. Father continued to ask why opposing counsel was able to give testimony and then objected to everything they said. He stated, "All the evidence that [opposing counsel] submitted, they don't even have any firsthand knowledge of any of the information that they have before them. How is it that

[2] The parents included a joint affidavit referring to themselves as Affiant in which they attested as follows "1. That Affiant is with sound, mind, and twenty-one (21) years of age or older. [¶] 2. That Affiant is an American, by birth-right, born on America soil, in the land of America. [¶] 3. That Affiant has never elected to become a United States citizen. [¶] 4. That Affiant has never elected to reside in land of the United States. [¶] 5. That Affiant has never elected to be a resident of the United States. [¶] 6. That Affiant has never elected to contract with the United States." They further noted the declaration was executed "without the United States," and under his signature, Father included his address in Antioch with the notation "post location without the United States."

they can have any reliability on anything that they're saying? I don't understand how there's no correctness or accuracy, no reliability, of the facts of what they're saying."

County counsel noted that she simply replied to the parents' submissions, and added, "[A]gain, I feel that there's a mental health impairment that would require him to have a guardian ad litem."

The court commenced the following inquiry:

"THE COURT: [¶] A guardian ad litem is somebody that would stand in your shoes to make legal decisions. They could contest matters, they can call witnesses, they can deny or admit petitions on your behalf. [¶] Do you understand what I'm saying to you?

". . . FATHER: No.

"THE COURT: They would make decisions on your behalf with your input, but they can make final decisions on your behalf. [¶] Do you understand what I'm saying?

". . . FATHER: No, I don't understand.

After Father told the court he did not wish the court to appoint a guardian ad litem for him, the court continued:

"THE COURT: Do you understand why you're here?

". . . FATHER: I know the reason why I'm here.

"THE COURT: Could you explain to the court why you think you're here?

". . . FATHER: I'm here because of the fact that down in Los Angeles where my two children were taken from my custody because I was court-ordered to leave them with my parents. Now, when I left them with my parents, they went and got a warrant and said I somehow neglected them. That's why I'm here. Because of that little case and that little situation that happened because I was court-ordered to do something and I complied and followed. Then they tell my parents to get a restraining order on me, and, otherwise, if they don't, that they're going to put my children in foster care. [¶] . . . [¶] Then later came out with the methadone being the reason why, you know, we can't have the child, and that's why I'm here."

"THE COURT: Okay.

" . . . FATHER: Do you realize I was court-ordered to leave my kids with my parents? I complied.

"THE COURT: That's why you think you're here?

" . . . FATHER: No, that's why I know why I am here because of that court case and it being open is the reason why I'm here right now to get my child back.

"THE COURT: Do you understand the allegations in the petition?

". . . FATHER: I know that they decided to say that I have a code 300, I guess you could say, for neglect. I know that."

At that point the court inquired as to Father's education. He had a high school diploma. He also attended college for "almost five years," graduated from a plumbing program, and became a "[j]ourneyman plumber in the union, Local 159." Asked to clarify if after high school he had had any further education, he responded "self-[taught]."

Father denied any history of mental illness except for ADHD he had as a child, but he had nothing that required psychotropic drugs. He said he was not under the care or treatment of any psychiatrist, psychologist, counselor or therapist. Nor was he on any medication. He added, "I had my children for 14 years and nothing ever happened to me. [¶] . . . [¶] I feel like I am being attacked. Like I said, I deal with things the best I can right now because of the situation that I'm losing my children over something that I never did anything wrong."

When the court asked him if he would reconsider appointed counsel, Father responded that he had an attorney who prepared the paperwork he had submitted. When the court said he needed counsel competent in dependency matters, Father responded, "I'll be honest with you, I had to pull something off because I had to wait until I got money, and when I got the money—I already know that I need to have that stuff notarized." He noted that money came in "right at the last minute" but explained, "Unfortunately . . . there's only so much I can do with a couple of days to be able to present you with something versus not having anything. So I pretty much did what I could right now . . . so it could be on the record because I'm looking at my appeal." He

concluded, "It's on you guys if you take my kid away. That's in your heart. It's not mine. [¶] I did the right thing that I felt was right and that I believed in as an American."

By a preponderance of the evidence, the court found Father unable to understand the nature of the proceedings and unable to assist counsel because he could not conduct a defense of the case in a rational manner. The court told Father it would appoint a guardian ad litem for him.

The following week, Father's guardian ad litem requested the court appoint Father an attorney. Thereafter, he was represented by counsel, and the case proceeded to disposition.

The disposition report recommended Ivy's removal and reunification services for both parents. The report explained that little was known about Father because he was "incoherent in electronic messages and unavailable in person or on the phone." Asking him any questions resulted in a "hostile" or "nonsensical" response. What was known about Father was derived from other sources.

Father had an active dependency proceeding in Los Angeles where allegations of general neglect were sustained as to Ivy's two half-sisters. Father was found to have "a long-standing history of substance abuse and [to be] a frequent user of illicit drugs." A 2017 dispositional report from that proceeding stated Father had admitted himself to a psychiatric hospital because he did not have a place to stay and told hospital staff he had suicidal thoughts. In the same report, Father said he was prescribed medication for ADHD when he was in federal prison but was no longer taking any psychotropics .

Further, in the Los Angeles dependency, Father did nothing to comply with the family reunification plan, threatened to sue the county and charge it for the return of his property. He refused representation there too, and had to be restrained by bailiffs and forcibly removed from the courtroom at one hearing. He neither visited or called his daughters because he refused to submit to supervised visits or monitored calls. The Los Angeles social worker described Father as " 'deeply mentally ill' and dangerous due to his drug induced psychotic features. She warned, " 'I have no doubt that if you gave the baby to them . . . very soon [Ivy and Mother] would both be dead.' "

Father's mother stated he was a "normal child" but "manifested extreme mental health issues after starting drug use." She stated, " '[Father] is what he is because of what he does. He became like that after (drug abuse) and I think he ruined his brain.' " She had secured a restraining order against him and had no contact with him for months.

The report also listed Father's criminal history of about a dozen arrests between 1995 and 2014, with a few misdemeanor convictions related to alcohol and drugs. In addition, in 2014, Father was the subject of a hold under section 5150.

The report also detailed the circumstances around Ivy's birth, her hospitalization, and the need to titrate her off morphine. When Ivy was born, both parents "exhibited signs of bizarre behavior" and refused to sign consents or authorization for fear they would be used against them. Father "exhibited obvious signs of mental health impairment" and Mother "exhibited no signs that she was capable of protecting the child from the father, and in fact seemed controlled by him."

As of the writing of the report, Father had neither visited nor requested visits. Nor was any parent engaged in services or available for any assessments or referrals.

The Department was "extremely reluctant to recommend services to either parent. If it were legally allowed . . . [it] would not recommend such services to such an unstable and unhealthy set of parents who have engaged in such a lengthy obfuscation of their lives and refusal to accept aid. Neither parent is in any capacity prepared to care for an infant. Neither parent is even close to being prepared to be a safe parent . . . . The parents should be evaluated closely for the next six months and if they fail to make solid progress, this child should be sent to adoptions with all due alacrity."

At the disposition hearing held on July 13, 2018, Mother, also represented by counsel, submitted to the disposition case plan. Father's counsel objected to the recitation of his arrests and convictions and to any order requiring him to complete services since he had completed an in-patient drug treatment program in 2012. He did not present any other evidence. The court adopted the findings and orders recommended by the Department. It found Ivy a person described by Section 300, subdivisions (b) and

(j) and adjudicated her a dependent of the court. This appeal from Father followed. Mother did not appeal.

DISCUSSION

I. Jurisdictional Findings and Order

"In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court. Evidence from a single witness, even a party, can be sufficient to support the trial court's findings." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.) On appeal, parents challenging the juvenile court's findings and orders bear the burden of showing there is insufficient evidence to support them. (*In re N.M.* (2011) 197 Cal.App.4th 159, 168.)

Father challenges all of the factual bases for the juvenile court's jurisdictional findings under Section 300, subdivisions (b) and (j). He contends each of the four jurisdictional issues must be separately addressed on the merits because of the existence of adverse consequences will follow from each finding. We decline to do so. " 'When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' " (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*).) Thus, we will analyze only the statutory grounds for jurisdiction asserted under section 300 subdivision (j). It was supported by substantial evidence.

Dependency jurisdiction is warranted pursuant to Section 300, subdivision (j) if "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d),

(e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions." (*I.J., supra,* 56 Cal.4th at p. 774 [the juvenile court must make two findings pursuant to subdivision (j): "(1) the child's sibling has been abused or neglected as defined in specified other subdivisions and (2) there is a substantial risk that the child will be abused or neglected as defined in those subdivisions."]; § 300, subd. (j).) "The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child." (*In re D.B.* (2018) 26 Cal.App.5th 320, 327-328; § 300, subd. (j).) "This 'expansive statutory language' has been interpreted to require the juvenile court ' "to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of any of the subdivisions enumerated in [section 300,] subdivision (j)." ' " (*Id.* at p. 329, italics omitted.)

The documents judicially noticed by the juvenile court satisfied the first subdivision (j) element and demonstrated that Ivy's half-sisters in Los Angeles had been neglected by Father. That court sustained allegations that Father had left the children with their grandparents without making a plan for their ongoing care and supervision; that he had failed to provide them with the basic necessities of life, including food, clothing, shelter and medical treatment; and that he led a transient lifestyle. The court also sustained allegations that Father had a history of mental and emotional problems which rendered him incapable of providing regular care and supervision to his daughters.

The Los Angeles dependency cases were proceeding concurrently with the Contra Costa case, so they provided a contemporaneous account of Father's difficulties as a parent. He was described by his Los Angeles social worker as "too erratic" to complete a recent reunification plan and as someone with a history of mental illness.

Father's erratic behavior was also displayed to the Contra Costa juvenile court in Ivy's dependency. The Detention/Jurisdiction Report provided evidence to satisfy the second element of subdivision (j) that Ivy was at risk of being neglected in the same

manner as her half-sisters. His "series of troubling" emails prompted his social worker to question Father's "mental health status." His own submissions to the court were incoherent and nonsensical. Thus, there was sufficient evidence to support the juvenile court's finding that Ivy was a child described by Section 300, subdivision (j).

Father disputes the extent to which the judicially noticed documents can supply the evidence for the exercise of jurisdiction. While judicial notice may be taken of the "*existence*" of a document in a court file, he argues judicial notice cannot be taken of the facts asserted in those documents unless those facts are contained in orders, findings of fact and conclusions of law and judgments. He notes the facts involving his two daughters in Los Angeles that were the bases for the subdivision (j) jurisdictional findings were never made part of the record. Father is correct that the evidence underlying the jurisdictional adjudication in Los Angeles (e.g., social studies and testimony) was never judicially noticed or made part of the record in this case, but that was not necessary for the juvenile court to sustain the subdivision (j) finding.

In *In re Joshua J.* (1995) 39 Cal.App.4th 984, two-week old Joshua was detained because his half-brother had been physically abused by Joshua's father some years before. (*Id.* at pp. 986-987.) The court took judicial notice of the findings and orders made in five related dependency proceedings involving the father's five older children. (*Id.* at p. 987, fn. 2.) The court found the true finding in the separate proceeding involving Joshua's half-brother was enough to sustain the first element of subdivision (j). (*Id.* at p. 992.) The court records show Ivy's half-siblings were adjudicated dependents under section 300 subdivisions (a) and (b) due to Father's neglect. This is enough to satisfy the first element of the subdivision (j) finding with respect to Ivy.[3]

Father contends that the subdivision (j) finding required evidence of "*actual* abuse or neglect" to Ivy's half-siblings. He says the judicially noticed documents "did not

[3] Father argues that it is unreasonable to infer from the Los Angeles court adjudication that Father's behavior created a substantial risk of harm to Ivy. Since we need not draw any inferences from the sustained petition in Los Angeles to support the Contra Costa court's findings, we do not address Father's arguments.

show that prior 'abuse or neglect' of the siblings had *actually* occurred . . . since both of the sustained allegations as to the siblings had merely alleged that the siblings were 'at risk' of abuse or neglect." We disagree with Father's characterization of the legal import of the findings. "Juvenile dependency proceedings are intended to protect children who are currently being abused or neglected, 'and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.' [Citation.] 'The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.' " (*In re T.V.* (2013) 217 Cal.App.4th 126, 133, italics omitted.) So, too, here. The juvenile court's jurisdictional findings would be correct even if the juvenile court's sustained allegations had only found Ivy's siblings to be at risk of abuse or neglect.

Finally, Father argues "the neglect suffered by [his daughters] . . . had not constituted abuse at all as they were cared for by the[ir] grandparents and, in any case, it [did] not cause[] sufficiently 'egregious' harm to the girls to render it 'appropriate' for the imposition of jurisdiction as to Ivy over a year later." No. Leaving children in the care of others, even their grandparents, without a plan or basic necessities is neglect. " ' "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court." ' " (*I.J.*, *supra*, 56 Cal.4th at p. 773.) We also reject any suggestion that his neglect of his other daughters was too remote in time to matter. "The court may consider past events in deciding whether a child currently needs the court's protection." (*In re Kadence* (2015) 241 Cal.App.4th 1376, 1383.) The Los Angeles County cases were proceeding concurrently with Ivy's case in Contra Costa County. Father's conduct leading to dependent jurisdiction in Los Angeles occurred in May 2017, hardly remote in time to Ivy's birth in February 2018.

II. Guardian Ad Litem Appointment

Even if the jurisdictional orders are affirmed, Father argues the juvenile court's dispositional findings and orders should be reversed because the appointment of a guardian ad litem for him was unwarranted and deprived him of control over his defense.

"In a dependency case, a parent who is mentally incompetent must appear by a guardian ad litem appointed by the court. [Citations.]" (*In re James F.* (2008) 42 Cal.4th 901, 910 (*James F.*).) " '[T]he primary concern in section 300 cases is whether the parent understands the proceedings and can assist the attorney in protecting the parent's interests in the companionship, custody, control and maintenance of the child.' [Citation.] 'In a dependency proceeding, a juvenile court should appoint a guardian ad litem for a parent if the requirements of either Probate Code section 1801 or Penal Code section 1367 are satisfied. [Citation.]' [Citation.]" (*In re M.P.* (2013) 217 Cal.App.4th 441, 453 (*M.P.*).) Penal Code section 1367 provides that a person is incompetent if he or she "is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner." (Pen. Code, § 1367.) Probate Code section 1801 allows for an appointment when a person is "unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter" or is "substantially unable to manage his or her own financial resources or resist fraud or undue influence." (Prob. Code, § 1801, subds. (a), (b).) " '[T]he trial court must find by a preponderance of the evidence that the parent comes within the requirements of either section.' [Citation.]" (*M.P.*, *supra*, at p. 453; see *In re Sara D.* (2001) 87 Cal.App.4th 661, 667 (*Sara D.*).)

"Before appointing a guardian ad litem for a parent in a dependency proceeding, the juvenile court must hold an informal hearing at which the parent has an opportunity to be heard. [Citation.] The court or counsel should explain to the parent the purpose of the guardian ad litem and the grounds for believing that the parent is mentally incompetent. [Citation.] If the parent consents to the appointment, the parent's due process rights are satisfied. [Citation.] A parent who does not consent must be given an opportunity to persuade the court that appointment of a guardian ad litem is not required, and the juvenile court should make an inquiry sufficient to satisfy itself that the parent is, or is not, competent. [Citation.] If the court appoints a guardian ad litem without the parent's consent, the record must contain substantial evidence of the parent's incompetence. [Citation.]" (*James F.*, *supra*, 42 Cal.4th at pp. 910-911.)

Here, the juvenile court conducted two informal guardian ad litem hearings. Father repeatedly declined to consent to such an appointment. At the second hearing, under the Penal Code 1367 standard, the juvenile court found by a preponderance of the evidence that Father was not competent to understand the nature of the proceedings and unable to assist counsel. The court appointed a guardian ad litem.[4] Father challenges this appointment, but the court's decision was supported by substantial evidence.

While Father may have understood the consequences of the proceedings and the risk of losing his child, there was no evidence that he was similarly aware of the nature of the dependency proceedings. His court filings were immaterial to the issues before the court and bordered on irrational. He, along with Mother, asserted at the disposition hearing a challenge to the court's "territorial jurisdiction" and demanded proof or evidence of the court's personal jurisdiction over him. He submitted a joint affidavit with Mother attesting to his American citizenship and that he "never elected to become a United States **citizen**," "never elected to **reside** in the land of the United States," and "never elected to **contract** with the United States." When opposing counsel attacked the procedural propriety of their submissions, Father improperly challenged their standing to speak and incorrectly accused them of making factual assertions that required they be sworn and put on the witness stand. Father's conduct provided sufficient evidence that he did not understand the nature of the dependency proceedings.

There was also substantial evidence to support the court's finding that Father was unable to assist counsel. As a self-represented litigant, Father repeatedly demonstrated his inability to help himself conduct his own defense in a sensible, proper, and rational manner. The court repeatedly warned him he would "[not] get any breaks" and would be held to the same standard as an attorney. Nonetheless, Father demonstrated no

[4] We easily reject Father's cursory argument that the court erred because "there had been no evidence presented that Probate Code section 1801 applied." "In a dependency proceeding, a juvenile court should appoint a guardian ad litem for a parent if the requirements of *either* Probate Code section 1801 or Penal Code section 1367 are satisfied." (*James F.*, *supra*, 42 Cal.4th at p. 916, italics original.) The court's findings under Penal Code section 1367 were sufficient for the appointment.

competency in litigating his dependency case. He mistakenly believed the dependency proceeding would be resolved in a jury trial and that he could request one as his constitutional right. In a filing he submitted at the jurisdiction hearing, he referred to his daughter as his property and demanded he be paid a $10,000-per-day bond while she was detained. He demanded Ivy be returned to him but set forth no evidentiary basis to challenge the allegations against him in the petition. At the contested disposition hearing, he objected solely on inapplicable "territorial jurisdiction" grounds and filed documents that were nonsensical with supporting affidavits containing extraneous information about his citizenship, residency, and contracting history with the United States.

Even if Father could understand the proceedings, we must affirm the decision to appoint a guardian ad litem if sufficient evidence supports the conclusion that he was unable to assist counsel in rationally preparing a defense. As discussed above, there was clear evidence he could not properly help himself as a self-represented litigant. Notwithstanding the college he completed or his long-term employment as a unionized plumber, he was not prepared to nor did he litigate the dependency proceeding in a sensible way. Ivy was a newborn when the court established jurisdiction over her, and the court needed to meet her needs for stability and permanency as quickly as possible. In these circumstances, the court was not in a position to delay making an appointment until Father could figure out how to competently represent himself.

Father also argues that the juvenile court "failed to provide sufficient detail in its description of the effect of [the] appointment of a guardian ad litem." He says the court gave a "watered-down version" of the description this court said was required in *In re Joann E.* (2002) 104 Cal.App.4th 347 (*Joann E.*). He claims any misgivings about his understanding of the nature of the proceedings resulted from the court's vague, inconsistent, and inadequate explanation. We are not persuaded. To the extent this argument challenges the process by which the guardian ad litem was appointed under *Joann E.*, it fails. In that case, we reversed the guardian ad litem appointment because there was absolutely no evidence the juvenile court held the prerequisite hearing. (*Id.* at p. 357.) The record also did not show the parent received notice of the court's intent to

appoint a guardian ad litem. (*Ibid.*) The court never inquired into the parent's competency or told the parent the purpose of the appointment, the guardian ad litem's rights over the parent's rights, or the reason the court felt the appointment was necessary. (*Id.* at p. 358.) Here, the juvenile court provided Father the necessary due process.

Father further contends the court's finding that a guardian ad litem was necessary was at odds with its earlier finding that he was able to make a knowing and intelligent waiver of counsel. He says there was no evidence that his mental state changed between these findings. On a related note, he suggests the facts at the second hearing when the court made the guardian ad litem appointment were no different from the facts at the first hearing when the court concluded no appointment was needed. On both points, we disagree. Neither the court's decision to allow Father to represent himself nor its initial decision to deny a guardian ad litem foreclosed the subsequent appointment. Father provides no authority for such a proposition. When the court made the appointment prior to disposition, Father had made additional erratic appearances and submitted nonsensical court filings. In short, the court had more compelling evidence upon which to base its conclusion the appointment was necessary.

Finally, even if the appointment of a guardian ad litem was erroneous, we would not reverse the disposition orders because Father demonstrates no prejudice. "[E]rror in the procedure used to appoint a guardian ad litem for a parent in a dependency proceeding is trial error that is amenable to harmless error analysis rather than a structural defect requiring reversal of the juvenile court's orders without regard to prejudice." (*James F., supra,* 42 Cal.4th at p. 915.) There is no evidence in the record Father's guardian waived any of his rights or took any action that contravened his interests or was contrary to his wishes. There is nothing in the record which suggests the disposition would have been more favorable to Father if he had not been appointed a guardian. Thus, any error in the appointment was harmless beyond a reasonable doubt.

Father says he should not be made to show prejudice and that attempting to assess what would have happened without the erroneous appointment would be highly speculative. We are not persuaded. Father's argument is not supported by any authority

and goes against the weight of authority applying the harmless error analysis in these circumstances. (See *James F.*, *supra*, 42 Cal.4th at p. 915; see also *In re Esmeralda S.* (2008) 165 Cal.App.4th 84, 96; see also *In re Enrique G.* (2006) 140 Cal.App.4th 676, 687; see also *Sara D.*, *supra*, 87 Cal.App.4th at p. 673.)

DISPOSITION

The findings and orders are affirmed.

_____
Siggins, P.J.

WE CONCUR:

_____
Fujisaki, J.

_____
Wiseman, J.*

*Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.